

IN THE SUPREME COURT  
OF THE

STATE OF COLORADO

NO. \_\_\_\_\_

THE PEOPLE OF THE STATE )  
OF COLORADO, BY AND THROUGH )  
THEIR DULY APPOINTED RE- )  
PRESENTATIVES, FRANK G. E. )  
TUCKER, DISTRICT ATTORNEY, )  
et, al., )

Petitioners, )

vs. )

THE DISTRICT COURT OF THE )  
STATE OF COLORADO, GEORGE )  
E. LOHR, AS ONE OF THE )  
DISTRICT COURT JUDGES OF )  
THE DISTRICT COURT )

Respondent. )

ORIGINAL PROCEEDINGS IN  
THE NATURE OF PROHIBITION.

COMES NOW, the People of the State of Colorado, by Frank G. E. Tucker, District Attorney for the Ninth Judicial District, by and through Robert L. Russel, Deputy District Attorney, and Milton K. Blakey, Deputy District Attorney, who allege as follows:

1. On October 26th, 1976, a Direct Criminal Information was filed in the District Court in and for the Ninth Judicial District (Criminal Action C-1616) charging Theodore Robert Bundy with First Degree Murder, a class 1 felony punishable upon conviction by imposition of the death penalty or life imprisonment, C.R.S. 16-11-103, 1973 as amended. (Attachment A.)
2. On April 4th and 5th, 1977, a Preliminary Hearing was held, and on April 6th, 1977, the Court found probable cause and ordered the Defendant, Theodore Robert Bundy, held for trial.
3. On May 16th, 1977, the Defendant filed a Motion to Strike the Death Penalty from consideration asking the Court to find that C.R.S. 16-11-103, 1973 as amended, is unconstitutional, in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States.

4. The Court considered the argument and briefs of counsel and on December 27th, 1977, the Court granted Defendant's motions, holding that the statute is unconstitutional. (Memorandum Opinion and Order - Attachment B.)

The Court in its Memorandum Opinion and Order held that: "Colorado's statutory sentencing plan is too rigid to satisfy constitutional standards." (Memorandum Opinion at P. 11.)

5. At this time the Court has set for trial of this case, People v. Theodore Robert Bundy, for trial on January 9th, 1978, at 9:00 a.m. If trial commences in accordance with the ruling of Judge George E. Lohr, the People will be precluded from qualifying a jury to impose the death penalty as outlined in People v. District Court, \_\_\_ Colo. \_\_\_, 546 P.2d 1268 (1976), and in the event of conviction the People would be precluded from requiring the second half of the bifurcated trial providing for the jury's determination of aggravating and/or mitigating factors. This would forever bar the possible imposition of the death penalty on Defendant.

6. Petitioners submit that this is a proper and compelling case for the Supreme Court to exercise its original jurisdiction as Petitioners have no plain, speedy and adequate remedy other than this proceeding, and the trial Court has abused its discretion for the following reasons: (See Biddle v. District in and for the Fifteenth Judicial District, 516 P.2d 645 (Colo. 1973).

a. The Court has not properly followed the decisions of the U. S. Supreme Court setting out the constitutional requirements for the imposition of the death penalty. Jurek v. Texas 96 S. Ct 2950, (1976), Proffitt v. Florida, 96 S. Ct. 2960 (1976), Woodson v. North Carolina, 96 S. Ct. 2978 (1976), Roberts v. Louisiana, 96 S. Ct. 2001 (1976).

b. The unconstitutionality of the statute has not been established beyond a reasonable doubt, and the Court has declined to construe the statute in a constitutional manner.

This is a matter of serious concern to the State of Colorado as a whole, as there are other defendant's

pending trial throughout the State under the same provisions and there are several cases pending appeal before the Colorado Supreme Court raising the issue of this statute's constitutionality.

(Similar issues relating to the appropriate use of mitigating factor is pending in Ferrel v. People, S. Ct. No. 27715.)

If the People are forced to proceed in this case the statutory penalty provided for a class 1 felony (Murder) cannot be applied and the defendant will be put in jeopardy, thereby forever barring a prosecution in which the death penalty could be imposed.

This decision permits treatment for this Defendant which is grossly unequal to that of defendants similarly charged before other District Judges.

WHEREFORE, Petitioner respectfully moves this Court issue an Order to Show Cause why the Respondent should not be prohibited from issuing his order striking the death penalty from consideration and that this Court order all further proceedings stayed pending a determination by the Court of the constitutionality of C.R.S. 16-11-103 1973 as amended.

Respectfully submitted,

FRANK G. E. TUCKER  
District Attorney

By: 

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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed to Judge George E. Lohr, Pitkin County Courthouse, Mr. Kevin O'Reilly, Box 1635, Glenwood Springs, Colorado, 81601 Mr. Ken Dresner, Jardon Building, Suite C, Gunnison, Colorado 81230, and Mr. Theodore Robert Bundy, Garfield County Jail, on this 30th day of December, 1977.

 Donna M. Beck